

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14517, of Hagos A. Seyoum and Teshome Hailu, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from restaurant seating 54, first floor, to grocery, retail and deli, no seating, in a R-4 District at premises 401 O Street, N.W., (Square 511, Lot 800).

HEARING DATE: December 10, 1986

DECISION DATE: February 4, 1987

FINDINGS OF FACT:

1. The site, known as premises 401 O Street, N.W. is located at the northwest corner of the intersection of New Jersey Avenue and O Street. The site is in the R-4 District.

2. The site has a frontage of 22 feet along O Street and 96.51 feet along New Jersey Avenue. The site is developed with a two-story, semi-detached brick building. The structure has been vacant for a number of years.

3. North of the site on New Jersey Avenue there is the Hello Deli-Carryout, a barber shop, and liquor store in the R-4 District. East of the site across New Jersey Avenue is Dunbar High School in the R-4 District. South of the site across O Street is a public playground and apartment complex in the R-5-B District. The subject premises abut a row dwelling, followed by three other row dwellings and Bundy School (D. C. Government offices) in the R-4 District. Both New Jersey Avenue and O Street carry two-way traffic and allow unrestricted curb parking.

4. The most recent Certificate of Occupancy, No. B-133671, dated January 13, 1986 allows a 54 seat restaurant, first floor.

5. Pursuant to Sub-section 8207.2 of the Zoning Regulations, the applicants are seeking a special exception to change a non-conforming use from a restaurant to a grocery, retail and deli, no seating.

6. A grocery/deli and restaurant are both first permitted as a matter-of-right in the C-1 District.

7. The New Jersey Avenue frontage of the square that the site is located in is developed with several nonconforming

uses, including a carry-out, barber shop and liquor store, all in the R-4 District.

8. The grocery/deli will be open from 7:00 A.M. to 10:00 P.M. Two full time employees will work at the site. The store will carry package goods and sell coffee.

9. The applicant does not propose to sell alcohol beverages at the site.

10. Deliveries are expected to be made to the site once a week between 10:00 A.M. and 11:00 A.M. Loading will occur at the east doors of the site.

11. The vast majority of the proposed operation's patrons are anticipated to be walk-in customers who are already in the neighborhood. Little automobile traffic is expected to result from the grocery/deli operation.

12. There is no space on-site to provide parking. There is unrestricted curb parking on both O Street and parts of New Jersey Avenue.

13. The structure is in a deteriorated condition and in need of renovations which the applicants proposes when the structure is renovated, the applicants propose to occupy the second floor as a residence.

14. By memorandum dated November 20, 1986, the Office of Planning (OP) recommended conditional approval of the application. The OP report that it is of the opinion that the grocery/deli (no seating) represents a change to a more restrictive use than the previous restaurant use of the site. Further, the grocery/deli by virtue of its expected neighborhood (walk-in) patronage is considered a neighborhood facility. The OP recommended that the application be granted conditioned on the following site planning and operational conditions meant to reduce any impacts on the adjacent residential properties (including Dunbar High School):

- a. No alcohol beverages shall be sold on the premises
- b. No vending machines shall be located on the exterior of the premises.
- c. Only one sign shall be displayed on the facade of the premises advertising the use and its products. (no back lighted or neon signs).
- d. A trash container shall be placed on the exterior of the entrance to the grocery.

- e. A sign noting "No Loitering" shall be placed on the exterior of the entrance to the grocery.

The Board concurs with the reasoning and recommendations of the Office of Planning.

15. By letter dated December 11, 1986, Advisory Neighborhood Commission (ANC) 2C, reported that it was in opposition to the application. The only reason for the opposition reported was that it "was in the community's best interest to oppose this application". The Board does not find the ANC's report persuasive as it does not state issues and concerns. The Board finds that the report is not in a form which entitles it to be accorded "great weight".

16. By letter dated December 2, 1986, the Shaw Project Area Committee, Inc. reported its opposition to the application. The Committee reported that the community has observed with growing concern the mushrooming of "Mom & Pop" stores, who when granted "special exceptions" by the BZA, immediately applied for and received their ABC beer and wine licenses. As an example, the Committee mentioned the deli carryout located in the middle of the 1200 block of 5th Street, N.W. which had assured the community at an ANC-2C meeting that they had no intention of having a beer and wine license, yet immediately applied for and received such a license after receiving BZA approval for their business in the middle of a R-4 District. The Hi-Sence Market, 1429 5th Street, N.W., received their ABC license over ANC-2C's opposition and it is located on one corner of 4th & P Streets and on two corners are a school and a church. Other reasons for their opposition were the location of similar businesses and schools within the vicinity of the site. Several neighbors of the site testified in opposition to the application for reasons stated above and because they are of the opinion that there are other services which the community needs more than a deli. The Board finds that the proposed operation is a business venture and that the business risk that the applicant chooses to take is not the jurisdiction of the Board. The Board further finds that it does not have the authority to dictate which business venture the applicant proposes for the site. The Board further finds that as conditioned below the establishment of the grocery/deli will not sell beer and/or wine. The Board also finds that no substantive evidence has been presented to demonstrate that the proposed use will be of detriment to students in the area.

#### CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial evidence that the applicant has complied with the

requirements of Paragraph 7106.11 and Sub-section 8207.2 of the Zoning Regulations.

Paragraph 7106.11 provides that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right provided that:

7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

7106.113 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming or less restrictive use.

7106.114 In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

7106.116 The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

The Board concludes that the applicant has met its burden of proof. The site is located in the R-4 District. A grocery/deli is not a permitted use in this zone district. A grocery/deli and restaurant are both first permitted as a matter-of-right in the C-1 District.

The Board concludes that the grocery/deli will not adversely affect the present character or future development of the surrounding area. Further, the proposed use will not create any deleterious external effects. The proposed use will be a neighborhood facility. The Board further concludes that as conditioned below the grant of the application will

not have a detriment affecte on the value, utilization, or enjoyment of property in the neighborhood.

The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and it will not affect adversely the use of neighboring property. Accordingly it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. No alcohol beverages shall be sold on the premises.
2. No vending machines shall be located on the exterior of the premises.
3. No more than one sign shall be displayed on the exterior of the premises advertising the use and its products. Such advertisement shall not be a neon or backlighted sign.
4. A trash container shall be placed near the entrance on the exterior of the grocery for customer use.
5. A sign prohibiting loitering shall be placed on the exterior near the entrance to the grocery.
6. Lighting shall be provided on the exterior of the premises to deter loitering.
7. There shall be no outside public telephone within 100 feet of the entrance to the grocery.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
EDWARD L. CURRY  
Acting Executive Director

FINAL DATE OF ORDER: APR 1 1987

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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